Illinois Heating and Air Conditioning, Inc. d/b/a Kranz Heating & Cooling *and* Sheet Metal Workers' International Association, Local Union 265. Case 13–CA–36388

May 11, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On December 15, 1998, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Illinois Heating and Air Conditioning, Inc. d/b/a Kranz Heating & Cooling, Villa Park, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Furnish to the Union the information it requested on June 13, 1997."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Sheet Metal Workers' International Association, Local Union 265, by refusing to furnish it, on request, with information necessary for, and relevant to the Union's function as the exclusive bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested on June 13, 1997.

ILLINOIS HEATING AND AIR CONDITIONING, INC.
D/B/A KRANZ HEATING & COOLING

Richard S. Andrews, Esq., for the General Counsel.
Richard L. Marcus, Esq. and *Ellen P. Zivitz, Esq*., of Chicago, Illinois, for the Respondent-Employer.
Stephen J. Rosenblat, Esq., of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me in Chicago, Illinois, on July 22 and 23, 1998, pursuant to a complaint and notice of hearing (the complaint) issued on April 8, 1998, and an amendment to the complaint on July 10, 1998, by the Regional Director for Region 13 of the National Labor Relations Board (the Board). The complaint, based on a charge filed on September 15, 1997,[1] by Sheet Metal Workers' International Association, Local Union 265 (the Union or Charging Party), alleges that Illinois Heating and Air Conditioning, Inc. d/b/a Kranz Heating & Cooling (the Respondent or Employer)[2] has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).[3]

Issues

The complaint alleges that the Respondent refused to provide necessary and relevant information to the Union for the performance of its duties as the exclusive bargaining representative of the unit in violation of Section 8(a)(1) and (5) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the service of heating and air conditioning, with an office and place of business in Villa Park, Illinois, where during 1996 it derived gross revenues in excess of $500,000 and performed services valued in excess of $50,000 for companies directly engaged in interstate commerce. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act. Even if the Respondent went out of business on November 25, 1996, based on its admission that it satisfied the Board's jurisdictional standards for 1996, the Board has jurisdiction over the Respon-

[1] We have modified the judge's recommended Order to require the Respondent to provide the Union with the information that it has requested, without the necessity of making a new request. See *I & F Corp.*, 322 NLRB 1037, 1037 fn. 1 (1997).

[1] All dates are in 1997 unless otherwise indicated.

[2] During the course of the hearing, the General Counsel and the Respondent agreed to amend the complaint to change the name of the Employer from Kranz Heating & Cooling, Inc. d/b/a Kranz Mechanical to the above.

[3] The General Counsel amended par. 7 of the complaint, during the course of the hearing, to include an 8(a)(1) allegation.

dent. See *Benchmark Industries,* 269 NLRB 1096, 1097–1098 (1984).

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Respondent has been in the heating and air-conditioning business for approximately 30 years and for the pertinent period was owned and operated by President James R. Schaaf. Since at least August 1, 1992, until November 25, 1996, when the Respondent went out of business, the Union has been the designated exclusive collective-bargaining representative of the unit employees. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 1996, to May 31, 1999.

On November 26, 1996, a number of Respondent's employees reported to work around 6:30 a.m. at the 305 W. North Avenue location and were unable to enter the premises. Shortly thereafter Schaaf arrived at the facility, opened the locked door, and called the assembled employees to a meeting in his office. Schaaf announced that the employees services were no longer needed as he sold the union branch of the Company and requested the employees to remove their tools from the company trucks before returning home in taxi cabs provided by Respondent. On that same day, Schaaf telephoned Union Business Manager George Slater and informed him that because he sold his business, he intended to shut down the 305 W. North Avenue location, and terminate all the union employees.

Employee Jeff Trucksa testified that while working at Respondent in the fall of 1996, he observed invoices and contracts that said Illinois Heating and Air Conditioning d/b/a/ Kranz Heating & Cooling, while other contracts showed a caption of Kranz Heating & Cooling and Kranz Mechanical. Approximately 1 week after Trucksa was laid off, he received a telephone call from Schaaf, who inquired if he would work for him as a union subcontractor and complete a job that he previously worked on before the layoff. Trucksa declined the offer.

Between December 1996 and early 1997, Slater was informed by several of the laid-off employees that Respondent's trucks were taking equipment in and out of the North Avenue location. He also was provided with a copy of a February 23 Chicago Tribune newspaper ad, that sought business and depicted a picture of a truck identical to the type used by Respondent before the layoff with the same telephone number for the North Avenue location. In January 1997, Slater learned from his accountants that during the second quarter of 1996, Kranz Heating & Cooling, Inc. became Illinois Heating & Air Conditioning, Inc. Then in November 1996, Illinois Heating & Air Conditioning, Inc. and another company owned by Schaaf, Kranz Mechanical, was purchased by American Residential Services, to which Schaaf became a stockholder.

In March 1997, Trucksa observed Respondent trucks driving in the neighborhood streets and credibly testified that the coloring and lettering of the trucks was identical to those that he drove while employed at Respondent. He also observed a number of the trucks getting gasoline at the same service station that he previously used. In early June 1997, Trucksa saw a number of ads in the Chicago Tribune newspaper showing that Respondent was advertising for business. He gave the ads to Slater at the regular scheduled June 10 union meeting, held on the second Tuesday of each month. Also in June 1997, employee Kip Costenaro credibly testified that while he drove by the North Avenue facility he observed Schaaf and salesman John Pole inside the office. Additionally, in 1997 Costenaro saw Respondent's name listed in the telephone directory with the same number for the North Avenue location.

During the union meeting, a discussion took place concerning what to do as it appeared that Respondent was continuing to operate its business despite abrogating the parties' collective-bargaining agreement and laying off all the union employees. Slater informed the employees that a questionnaire was being prepared to determine whether the Employer was still in existence and operating under a different name. Accordingly, on June 13, Slater prepared and sent regular and certified mail, return receipt requested, a "Double-Breasted Questionnaire" (G.C. Exh. 1) consisting of 67 questions to discern whether Respondent and the new company were alter egos or joint employers.[4] The Respondent did not reply to or provide the requested information to the Union despite signing the certified return receipt on June 16 (G.C. Exh. 15). In this regard, an individual by the name of John Pole signed the receipt and was identified during the hearing as a salesman employed by Respondent prior to the close of its business on November 25, 1996.

B. Analysis and Conclusions

The General Counsel argues that the Union was entitled to the information requested in the letter of June 13, and that Respondent's refusal to fulfill that request violated Section 8(a)(1) and (5) of the Act. The Respondent opines that the Union has no bargaining relationship with regard to any new company and that even if a bargaining obligation exists if the two-firms were alter egos, the General Counsel has not shown that the Union had the necessary factual basis for the demand for information regarding the relationship between Respondent and any new company.

The Board in *Sheraton Hartford Hotel,* 289 NLRB 463–464 (1988), set forth the law to be applied in situations like the instant matter:

> Section 8(a)(5) obligates an employer to provide a union requested information. If there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern matters pertaining to the bargaining unit, the union must show that the information is relevant. When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information.

[4] The cover letter was addressed to Jim Schaaf at the North Avenue location and stated in pertinent part that:

> The undersigned is the Business Manager for the Sheet Metal Workers' International Association, Local 265. Your company and Local 265 have been parties to a collective bargaining agreement for the past several years. It is our understanding that your company is related to a non-union company known as Illinois Heating & Air Conditioning. In order to perform its responsibilities as the exclusive representative of Kranz Heating and Cooling, Inc.'s employees, the Union hereby requests that you provide answers to the enclosed questions no later than June 23, 1997.

Also, where as in the instant case, a union has asked an employer for information to show either an alter ego, or a joint employer relationship, the union is entitled to such information if it demonstrates that when it made the request it had "an objective factual basis for believing that such a relationship existed. *M. Scher & Son,* 286 NLRB 688, 691 (1987).

The Union here has clearly satisfied the burden of establishing the relevance of the information that they requested on June 13. They have represented Respondent's employees for a number of years and were a party to a viable collective-bargaining agreement that was executed in June 1996, a period before the Respondent went out of business. The Union is entitled to know whether the Respondent legitimately went out of business as it alleges, or whether Schaaf created a new company and transferred Respondent's work in order to pay lower nonunion wages and be more profitable and/or to get rid of the Union. Additionally, as set forth in the June 13 cover letter, the Union sought information in order to perform its responsibilities as the exclusive representative of Respondent's employees and to enforce the provisions of the parties' collective-bargaining agreement.

I also find that by June 13 the Union had "an objective factual basis" for believing that the Respondent and the new company were either joint employers or alter egos of each other, and therefore, constituted a single employer for purposes of enforcing the collective-bargaining agreement. Thus, by that date, the Union knew that the Respondent was operating the same or similar business from the same location with the same equipment and telephone number as was previously used prior to going out of business on November 25, 1996. Moreover, the Union knew that Schaaf and other former Respondent employees were involved in running the business and advertised in the newspaper and telephone directory under the same Kranz Heating & Cooling name.

Under these circumstances, I find that the Union has shown that all the information requested in its letter to the Respondent, dated June 13, was relevant and essential to the performance of its duty as the collective-bargaining representative of Respondent's employees. I conclude, therefore, that the Respondent, by failing and refusing to provide all the information requested by the Union in the letter of June 13, violated Section 8(a)(1) and (5) of the Act. *E. J. Alrich Electrical Contractors,* 325 NLRB 1036 (1998).

CONCLUSIONS OF LAW

1. The Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to respond to the Union's information request made on June13, 1997, the Respondent violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In that regard, I shall recommend that Respondent be ordered to, on request, promptly provide the Union with the information that it requested on June 13, 1997.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Illinois Heating and Air Conditioning, Inc. d/b/a Kranz Heating & Cooling, Villa Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Sheet Metal Workers' International Association, Local Union 265, by failing and refusing to furnish it with information that was requested on June 13, 1997, which information is relevant and necessary to administer the collective-bargaining agreement that they have with the Respondent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, on request, the information it requested on June 13, 1997.

(b) Within 14 days after service by the Region, post at its facility in Villa Park, Illinois, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 13, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."